

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 555 of 1997

in

CIVIL APPLICATION No 3249 of 1996

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE C.K.THAKKAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS AND LEGAL REPRESENTATIVE OF ALI MOHMAD VALI MOHMAD

Versus

KASAMKHAN GULABKHAN BALOCH

Appearance:

Mr.S.M. Shah, Advocate, for the Appellants
M/S TRIVEDI & GUPTA for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR RA MISHRA for Respondent No. 7

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE C.K.THAKKAR

Date of decision: 01/03/2000

ORAL JUDGEMENT: (Per D.M. Dharmadhikari, C.J.)

Admitted. M/s. Trivedi and Gupta, Advocates, appear and waive service of notice of admission on behalf of respondent No.1. With the consent of the parties, the matter is heard finally today.

This Letters Patent Appeal has been filed against an order dated 8.4.1997, passed by a learned Single Judge in Civil Application No.3249 of 1996 in Special Civil Application No.6401 of 1995. By the impugned order, the learned Single Judge has allowed the application preferred by Kasamkhan Gulabkhan Baloch, respondent No.1 herein, for impleading him as party to the Special Civil Application. Kasamkhan Gulabkhan Baloch, who claims to have purchased the evacuee property on 18th March, 1996, claims to get himself substituted for the original petitioner (appellant herein), who are purchasers of the property from the original evacuee, Rukia Kasam, on 22nd August, 1975.

In the said application for substitution, an alternative prayer made was that Kasamkhan Gulabkhan Baloch may be allowed to be joined as co-petitioner.

The main application was preferred by the present appellant against the order dated 30.1.1995 passed by the Collector-cum-Assistant Settlement Commissioner, Junagadh, respondent No.5 herein. From the facts stated above, the appellant (original petitioner) claims the property under an earlier sale deed dated 22.8.1975, whereas Kasamkhan Gulabkhan Baloch, respondent No.1 herein, is claiming the same property under sale deed dated 18.3.1996. There is inter se conflict of interest between them. The application was filed by Kasamkhan Gulabkhan Baloch for substitution in place of the original petitioner (appellant herein) and alternatively, for joining as co-petitioner. Since there is inter se conflict of interest with regard to the title of property between the present appellant and Kasamkhan Gulabkhan Baloch, the learned Single Judge was obviously in error in permitting Kasamkhan Gulabkhan Baloch to be allowed to be joined in the petition as a co-petitioner. It cannot, however, be denied that Kasamkhan Gulabkhan Baloch is a proper party to the petition and could have been allowed to be joined as party-respondent.

As a result of the discussion aforesaid, the L.P.A. is allowed and the impugned order of the learned Single Judge dated 8.4.1997 is set aside. Respondent No.1, Kasamkhan Gulabkhan Baloch, may be added and shown as party respondent in Special Civil Application No.6401

of 1995. Office to correct the record of the petition accordingly. We purposefully refrain from expressing any opinion on the merits of the case pending before the learned Single Judge.

1st March, 2000 (D.M. Dharmadhikari, C.J.)

(C.K. Thakkar, J.)

(apj)